

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS
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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
| 08/975,284 | 11/20/97 | THERMUS | W 060850.P002 |

QM02/0202
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| EXAMINER | |
| WELDON, R | |
| ART UNIT | PAPER NUMBER |
| 3752 | // |

DATE MAILED: 02/02/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

| | | |
|--|--------------------------------------|-------------------------------|
| Defective Notice of Appeal or Brief | Application No. 08/793,682 | Applicant(s) Sand |
| | Examiner Weldon, Kevin | Group Art Unit 3104 |

The Notice of Appeal filed on _____ is:

not acceptable because:

- it was not timely filed.
- the statutory fee for filing the appeal was not submitted. See 37 CFR 1.17(b).
- the appeal fee received on _____ was not timely filed.
- the submitted fee of \$ _____ is insufficient. The appeal fee required by 37 CFR 1.17(b) is \$ _____ .
- the appeal is not in compliance with 37 CFR 1.191 in that there is no record of a second or a final rejection in this application.
- a Notice of Allowability, form PTO-37, was mailed by the Office on _____ .

The appeal brief filed on Dec 27, 1999 is NOT acceptable for the reason(s) indicated below:

- The brief and/or brief fee is untimely. See 37 CFR 1.192.
- The statutory fee for filing the brief has not been submitted. See 37 CFR 1.17(c).
- The submitted brief fee of \$ _____ is insufficient. The brief fee required by 37 CFR 1.17(c) is \$ _____ .

The appeal in this application will be dismissed unless corrective action is taken. Extensions of time may be obtained under 37 CFR 1.136(a).

The appeal in this application is DISMISSED because:

- The fee for filing the brief as required under 37 CFR 1.17(c) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- The brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.

Because of the dismissal of the appeal, this application:

- is abandoned because there are no allowed claims.
- is being returned to the examiner for final disposition because it contains allowed claims. Prosecution on the merits is CLOSED.

Art Unit: 375✓

The brief does not contain, for each rejection under 35 U.S.C. 102, an argument which specifies the errors in the rejection and why the rejected claims are patentable under 35 U.S.C. 102, including any specific limitations in the rejected claims which are not described in the prior art relied upon in the rejection.

The appellant has not argued why claims 10 and 12 are considered to be patentable over Yerkins under 35 U.S.C. 102.

The brief does not contain, for each rejection under 35 U.S.C. 103, an argument which specifies the errors in the rejection and, if appropriate, the specific limitations in the rejected claims which are not described in the prior art relied upon in the rejection, and an explanation how such limitations render the claimed subject matter unobvious over the prior art. If the rejection is based upon a combination of references, the argument must explain why the references, taken as a whole do not suggest the claimed subject matter, and shall include, as may be appropriate, an explanation of why features disclosed in one reference may not be properly combined with features disclosed in another reference. A general argument that all the limitations are not described in a single reference does not satisfy the requirements of 37 CFR 1.192(c)(8)(iv).

The appellant has not argued why claim 4 is considered to be patentable over Rodriguez-Ely in view of Yerkins under 35 U.S.C. 103

Appellant is required to comply with provisions of 37 CFR 1.192(c).

Art Unit: 3754

To avoid dismissal of the appeal, Appellant must comply with the provisions of 37 CFR 1.192© within the longest of any of the following TIME PERIODS: (1) ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of this communication; (2) within the time period for reply to the action from which appeal has been taken; or (3) within two months from the date of the notice of appeal under 37 CFR 1.191. Extensions of these time periods may be granted under 37 CFR 1.136.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Weldon whose telephone number is (703) 308-1117. The examiner can normally be reached on Tues-Fridays from 7 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andres Kashnikow, can be reached on (703) 308-1137. The fax phone number for this Group is (703) 308-7764.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703)308-0861.


Kevin Weldon
Primary Examiner